

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARSELL SMOKER,)	
)	Civil Action No. 06-1556
Plaintiff,)	
)	Judge McVerry
vs.)	
)	Magistrate Judge Lenihan
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff's Complaint was filed by the Clerk of Court on November 27, 2006, and was referred to United States Magistrate Judge Lisa Pupo Lenihan in accordance with the Magistrate Judge's Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation (Doc. No. 17) filed on March 12, 2008, recommended that the Motion for Summary Judgment filed by Plaintiff be granted, and the Motion for Summary Judgment filed by Defendant be denied, and that the decision of the Commissioner of Social Security denying an award of disability insurance benefits and supplemental security income be vacated and remanded for further proceedings consistent with the Report and Recommendation. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judge's Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, that they had ten (10) days to file any objections. No objections have been filed. After review of the pleadings and the documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 4th day of April, 2008;

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is granted, and Defendant's Motion for Summary Judgment is denied, and that the decision of the Commissioner of Social Security denying an award of disability insurance benefits and supplemental security income is vacated and remanded for further proceedings consistent with the Report and Recommendation.

IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 17) of Magistrate Judge Lenihan, dated March 12, 2008, is adopted as the Opinion of the Court.

BY THE COURT:

s/ Terrence F. McVerry
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

All counsel of record
Via Electronic Filing